

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request to Support Request for Supreme Court Review in the Case of Gammoh v. City of Anaheim

MEETING DATE: May 18, 1999 Actual Date: 8/18/99

PREPARED BY: City Attorney

RECOMMENDATION: The City join the request to the Supreme Court to review the case of Gammoh v. City of Anaheim.

BACKGROUND: On June 29, 1999 the California Court of Appeal, Fourth Appellate District published its opinion in this case. This published opinion virtually eliminates a California city's ability to enforce the location requirements in their sex-oriented business zoning ordinances without risking civil rights liability. No longer may a city deny a permit to a sex-oriented business simply because the business proposes to locate within a prescribed distance from residentially zone property. The Gammoh decision now requires cities to undertake a case by case analysis of the facts in every application of the City's sex-oriented business ordinance in order to determine whether and to what extent the residential property in close proximity to the sex-oriented business will in fact be adversely affected by the operation of the sex-oriented business. This decision directly conflicts with well-established law by requiring the City to engage in a subjective judgment intensive analysis, which constitutes an unconditional prior restraint.

The City of Anaheim is seeking support in its attempt to obtain Supreme Court review of the Court of Appeal's decision. Allowing the Court of Appeal's decision to remain places the City in a position of engaging in highly speculative judgment intensive case by case analysis which have been declared to be an unconstitutional prior restraint under previous decided cases.

FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney

APPROVED: _____


H. Dixon Flynn -- City Manager